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October 8, 2003

VIA ELECTRONIC FILING

Marlene Dortch, Secretary,
Federal Communications Commission
445 12th Street SW
Room TWB-204
Washington, DC 20554

Re: Ex Parte Notification: WC Docket 03-167, Application By SBC Communications Inc. For Authorization Under Section 271 of The Communications Act to Provide In-Region, Inter LATA Service in the States of Illinois, Ohio, Indiana and Wisconsin

Dear Ms. Dortch:

Pursuant to Section 1.1206 of the Commission's Rules, Mpower Communications Corp. ("Mpower), by its undersigned counsel, submits this notification of an ex parte meeting in the above-captioned proceeding that took place yesterday involving the undersigned, Pat Wilson of Mpower (via teleconference) and Jessica Rosenworcel, Legal Advisor to Commissioner Copps. Materials referred to in the course of the presentation are attached hereto.

The parties discussed SBC's failure to comply with Checklist Item 2 of the 271 Checklist in the state of Illinois. Specifically, the parties discussed SBC's improper billing of Mpower for trip charges associated with approximately 14,000 trouble tickets, SBC's refusal to address the disputed charges with Mpower or adhere to the agreement between the parties to settle the disputes, and the on-going problems associated with SBC's inability to properly code trouble tickets and the resulting improper billing. The parties also discussed SBC's September 22 and October 2, 2003 ex parte presentations in this docket responding to Mpower's September 16 and September 24 filings.

Specifically, the parties discussed SBC's contentions in its September 22 and October 2, 2003 ex parte responses: (1) that SBC has a new process in place "in hopes" of reducing the number of billing disputes that arise as a result of SBC's faulty trouble ticket coding

Marlene Dortch
October 8, 2003
Page Two

process; (2) SBC's contention that Mpower does not expend any effort to demonstrate why it believes SBC's charges are inappropriate; and (3) that Mpower has "not agreed to an appropriate sample of trouble tickets from a time period that already was the subject of a prior settlement."

Mpower explained that the new "process" touted by SBC as a solution to the systemic billing problems highlighted by the Mpower dispute consists merely of an electronic method of filing disputes, and that Mpower has not observed any decrease in the number of trip charge disputes it has been forced to file. Further, Mpower provided an explanation of the intensive research and investigation that it undertakes both prior to filing any dispute of improper trip charges with SBC, as well as the hours it expends researching and investigating the disputes in order to prove Mpower's position to SBC once the disputes have been filed. SBC's contention that Mpower has refused to provide a new sample of trouble tickets is simply false. Moreover, SBC has not explained to Mpower why it refuses to adhere to the ground rules that one of its senior executives agreed to as a means of settling the disputes.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Ross A. Buntrock". The signature is fluid and cursive, with the first name "Ross" being the most prominent.

Ross A. Buntrock

cc: Jessica Rosenworcel

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Dear Ms. Dortch:

Pursuant to Section 1.1206 of the Commission's Rules, Mpower Communications Corp. ("Mpower"), by its undersigned counsel, submits this notification of an ex parte meeting in the above-captioned proceeding that took place yesterday involving the undersigned, Scott Sarem and Pat Wilson of Mpower (both via teleconference) and Matthew Brill, Legal Advisor to Commissioner Abernathy. Materials referred to in the course of the presentation are attached hereto.

The parties discussed SBC's failure to comply with Checklist Item 2 of the 271 Checklist in the state of Illinois. Specifically, the parties discussed SBC's improper billing of Mpower for trip charges associated with approximately 14,000 trouble tickets, SBC's refusal to address the disputed charges with Mpower or adhere to the agreement between the parties to settle the disputes, and the on-going problems associated with SBC's inability to properly code trouble tickets and the resulting improper billing. The parties also discussed SBC's September 22 and October 2, 2003 ex parte presentations in this docket responding to Mpower's September 16 and September 24 filings.

Specifically, the parties discussed SBC's contentions in its September 22 and October 2, 2003 ex parte responses: (1) that SBC has a new process in place "in hopes" of

Marlene Dortch
October 8, 2003
Page Two

reducing the number of billing disputes that arise as a result of SBC's faulty trouble ticket coding process; (2) SBC's contention that Mpower does not expend any effort to demonstrate why it believes SBC's charges are inappropriate; and (3) that Mpower has "not agreed to an appropriate sample of trouble tickets from a time period that already was the subject of a prior settlement."

Mpower explained that the new "process" touted by SBC as a solution to the systemic billing problems highlighted by the Mpower dispute consists merely of an electronic method of filing disputes, and that Mpower has not observed any decrease in the number of trip charge disputes it has been forced to file. Further, Mpower provided an explanation of the intensive research and investigation that it undertakes both prior to filing any dispute of improper trip charges with SBC, as well as the hours it expends researching and investigating the disputes in order to prove Mpower's position to SBC once the disputes have been filed. SBC's contention that Mpower has refused to provide a new sample of trouble tickets is simply false. Moreover, SBC has not explained to Mpower why it refuses to adhere to the ground rules that one of its senior executives agreed to as a means of settling the disputes.

Respectfully submitted,



Ross A. Buntrock

cc:
Matthew Brill
Pamela Arluk

Scott Sarem Mpower VP Strategic Relations, Pat Wilson, Mpower Director
Strategic Relations;; Ross Buntrock, Kelley Drye & Warren
October 7, 2003

SBC Midwest 271 Application, WC Docket 03-167



[NOW YOU HAVE THE POWER]

Overview

- Background of Mpower.
- 271 Precedent Requires SBC to Show it Provides Accurate, Auditable Wholesale Bills.
- History of Mpower's Trip Charge Dispute With SBC.
- SBC-IL Violates Checklist Item 2.

Background of Mpower

- Facilities-based CLEC providing voice and data products to small, medium and large businesses.
- Provides Service in California, Illinois and Nevada.
- Collocated in 300 central offices (70 in Illinois).

Section 271 Requires SBC to Provide Accurate Wholesale Bills

- *Verizon Pennsylvania Order*, Memorandum Opinion and Order, 16 FCC Rcd 17419, ¶22-23 (2001) concluded:
 - “Inaccurate or untimely wholesale bills can impede a competitive LEC’s ability to compete in many ways. First, a competitive LEC must spend additional monetary and personnel resources reconciling bills and pursuing bill corrections. Second, a competitive LEC must show improper overcharges as current debts on its balance sheet until the charges are resolved, which can jeopardize its ability to attract investment capital. Third, competitive LECs must operate with a diminished capacity to monitor, predict and adjust expenses and prices in response to competition.”
- Grossly inaccurate billing, on on-going basis denies CLECs a meaningful opportunity to compete.

History of Mpower's Dispute with SBC

- SBC has admitted that it incorrectly billed Mpower for trip charges in Illinois between April 2002 through August 2003.
 - Mpower investigates every trouble before opening a ticket with SBC
 - SBC billed Mpower for 14,000 trouble tickets during the dispute period.
 - In an effort to resolve a \$1.2 Million dispute, SBC and Mpower agreed to research a random sample for a two month period and apply the results to the entire dispute period.
- The results of the research was that SBC Ameritech incorrectly billed Mpower 93% of the time.
- Mpower provided SBC with another randomly selected group of trouble tickets from the same sample and came up with identical results.

History of Mpower's Dispute with SBC

- SBC will not honor the agreement it made to resolve the dispute, and has provided no factual basis to suggest that the results of the random sample were incorrect
 - SBC agrees with the results of the sample (98% of the trouble tickets were billed incorrectly)
 - SBC does not want to take a financial hit against a \$1.2 million receivable
 - SBC merely wants Mpower to accept a different number for a settlement with no reasoning or factual analysis to support its position
- SBC is flexing its muscles to collect on admittedly incorrect bills

SBC-IL Violates Checklist Item 2

- SBC must be held accountable for its non-compliance with the 271 Checklist.
- SBC's poor billing performance is NOT a discrete issue limited to Mpower.
- SBC has no process in place to resolve these disputes quickly (as evidenced by the 14 mo vintage of this one).
- SBC has failed to demonstrate that its "new process" to ensure proper trouble ticket coding.

Conclusion: The Commission Should NOT Approve the Illinois Application

- SBC must not be awarded 271 authority in IL until it can affirmatively demonstrate that it is in compliance
 - This includes resolving Mpower's issue
- The Wireline Competition Bureau has told Mpower that SBC's 271 authority is a "sure thing" despite deficiencies in SBC's billing practices and systems.
- The FCC must enforce the law.
- If SBC is not held accountable for compliance with the law it will be further emboldened to act anti-competitively toward facilities based CLECs.

KELLOGG, HUBER, HANSEN, TODD & EVANS, P.L.L.C.

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October 2, 2003

Ex Parte Presentation

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

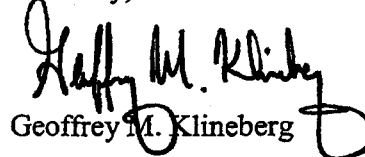
Re: *Application by SBC Communications Inc., et al. for Provision of In-Region, InterLATA Services in Illinois, Indiana, Ohio, and Wisconsin,*
WC Docket No. 03-167

Dear Ms. Dortch:

On behalf of SBC Communications Inc. ("SBC"), I am writing to inform you that representatives of SBC participated yesterday on a conference call with FCC staff to discuss further the IP addresses issue raised by AT&T and the billing issue raised by Mpower. The following people participated on behalf of SBC: Martin E. Grambow, Kelly M. Murray, Beth Lawson, Tom Honigfort, Rebecca L. Sparks, Jamie Williams, and Geoffrey M. Klineberg. The following participated on behalf of the FCC: Pamela Arluk, Cathy Carpino, Michael Goldstein, and Rodney McDonald.

At the request of FCC staff, SBC is providing a written response to questions raised during the meeting. See Attachment. In accordance with this Commission's Public Notice, DA 03-2344 (July 17, 2003), SBC is filing this letter electronically through the Commission's Electronic Comment Filing System. Thank you for your kind assistance in this matter.

Sincerely,


Geoffrey M. Klineberg

Attachment

cc: Pam Arluk	Hisham Choueiki
Cathy Carpino	Nicholas Linden
Janice Myles	Layla Seirafi-Najar
Jon Feipel	Qualex International
Karl Henry	

ATTACHMENT

I. AT&T's Issue Regarding Availability of IP Addresses

SBC's existing procedures regarding IP address availability was formulated as part of the Uniform and Enhanced OSS Plan of Record development process in compliance with the SBC/Ameritech Merger Conditions. That process involved collaboration with the CLEC community and resulted in an agreement according to which CLECs could establish three Trading Partner ID ("TPID") and IP address combinations per function (ordering and pre-ordering), per environment (test and production), and per region. See Ex Parte Letter from Geoffrey M. Klineberg, Kellogg, Huber, Hansen, Todd & Evans, P.L.L.C., to Marlene H. Dortch, FCC, Attach. C at 1 (Sept. 22, 2003) ("SBC's Sept. 22 Ex Parte").

Notwithstanding this agreement, SBC does allow for exceptions whereby CLECs may request additional TPID and IP address combinations. In fact, AT&T requested such an exception, and SBC accommodated AT&T's request in October 2001 by providing it with six TPID and IP address combinations – three for its consumer operations and three for its business operations. AT&T specifically agreed to manage its consumer and business operations utilizing these six TPID and IP addresses combinations.¹ One other CLEC has requested additional TPIDs, and SBC has accommodated that request. SBC is not aware of any other CLEC who currently has issues with the availability of TPIDs and IP addresses.

While there are no technical limitations to adding a single TPID and IP address combinations for a CLEC, it is important to recognize that each TPID adds additional processing overhead and that each originating IP address represents an exposure to SBC's security firewall. For performance and security reasons, therefore, SBC has a very real interest in limiting the number of TPIDs and IP addresses assigned. SBC has attempted to balance its needs with the needs of the CLECs and has implemented and applied its policy regarding IP address availability on a nondiscriminatory basis.

SBC believes that, to date, AT&T has sufficient TPID and IP address combinations for both its day-to-day operations and disaster recovery. Nonetheless, AT&T has made a number of claims regarding TPID and IP address availability:

First, AT&T's claims that it "has no IP address available for use with its disaster recovery plan," because it is "currently using its full complement of three addresses" for its consumer operations in the Midwest. However, that is simply untrue. AT&T does not use the two IP addresses combinations it has established for its Digital Link operations in the Midwest region. According to SBC's records, AT&T is sending no transactions to SBC over those connections. This likely is because AT&T uses LEX – and not EDI – to send Digital Link transactions in the Midwest region.

Second, AT&T claims that SBC "has previously agreed to provide an additional IP address for AT&T's disaster recovery plan in the West and Southwest regions." This,

¹ See SBC's Sept. 22 Ex Parte, Attach. C at 1 n.2 & Exhibit (e-mail correspondence documenting AT&T's agreement).

likewise, is simply untrue. As set forth in its September 22 Ex Parte, SBC has not agreed to implement additional IP addresses in the West and Southwest regions.² SBC's policies are consistent across all of its regions. In each region, as described above, SBC allows AT&T's business unit three production TPID/IP address combinations and AT&T's consumer unit three TPID/IP address combinations.

Third, AT&T claims that, due to its arrangements and "SBC's arbitrary restrictions," it has no IP address available for use in disaster recovery. However, it is apparent that this is not due to SBC's policy but rather to AT&T's decision to configure its arrangements differently in the three regions. Specifically, in the Midwest, AT&T's consumer unit currently is configured to use a total of three TPID/IP address combinations, whereas in the West and Southwest, it is configured to use only one TPID/IP address combination. Thus, in the West and Southwest regions, AT&T has additional addresses available out of its total allotment of three for implementation of a disaster recovery plan.³

Finally, AT&T suggests that SBC has a more restrictive IP address availability policy than the other regions. SBC has no information concerning firewall vulnerability in the Verizon, BellSouth, and Qwest regions, or about the specifics of their IP address policies. However, it is clear that SBC currently makes a total of 24 production IP addresses available to AT&T – six in the Midwest, six in the West, six in the Southwest, and six in the East. This number compares favorably with the number AT&T states it has in the other regions – 25 in Verizon, 14 in BellSouth, and 11 in Qwest.

In an effort to resolve AT&T's concerns on a business-to-business basis, SBC made a proposal on September 26, 2003, to expand the current definition of a "TPID/IP address combination." Specifically, under the current definition, a TPID associated with different inbound and outbound IP addresses is counted as two separate TPID/IP address combinations. Under the expanded definition proposed by SBC, such an arrangement would count as a single TPID/IP combination.

With this proposal, AT&T would have the option of associating each of its three consumer TPIDs with separate inbound and outbound IP addresses – providing AT&T with six separate IP addresses for its consumer operations and another six for its business operations in each SBC region. AT&T thus will have the option of associating one LOA TPID with one IP address for inbound Consumer transactions and another IP address for outbound Consumer

² See SBC's Sept. 22 Ex Parte, Attach. C at 2.

³ Although AT&T conceded this point in its original filing in this proceeding, see DeYoung/Willard Decl. ¶ 29 n. 15 ("SBC agreed to provide an address in the SWBT and Pacific Bell regions because in those states AT&T has established only two IP addresses; therefore, AT&T still has one IP address available in those regions"), it has inaccurately contended in its last two ex parte letters that SBC has agreed to make additional addresses available in the West and Southwest regions. See Letter from James P. Young, Counsel for AT&T, to Marlene H. Dortch, FCC, at 2 (Sept. 16, 2003); Letter from James P. Young, Counsel for AT&T, to Marlene H. Dortch, FCC, at 2 (Sept. 29, 2003).

transactions. Similarly, a second LOA TPID could be associated with separate inbound and outbound IP addresses for Digital Link transactions, leaving a third LOA TPID available for whatever additional inbound/outbound transactional needs AT&T may have, including a disaster recovery plan. Notably, this would provide AT&T with 12 production IP addresses for ordering in each SBC region, for a total of 24 TPIDs and 48 IP addresses.

AT&T has confirmed that it is interested in moving forward with this proposal. See Exhibit (containing copy of an e-mail discussion between SBC's Janice Bryan and AT&T's Rebecca Webber). In addition, AT&T has agreed to re-evaluate the use of Network Address Translation ("NAT") as a solution for its disaster recovery needs. Id.

SBC will make this expanded definition of TPID/IP address combinations available to all CLECs within its regions. Moreover, it will include that definition in the next update of its Interconnection Procedures document, available on the CLEC Online web site.

II. Mpower's Issue Regarding Billing For Trip Charges

In its September 24, 2003, Ex Parte Letter, Mpower restates its claim that SBC is improperly billing it for trip charges. SBC believes that it has adequately explained in its prior submissions that Mpower's complaint does not allege any systematic problems with SBC's wholesale billing systems and that this is simply an intercarrier dispute that can best be resolved on a business-to-business basis.

It appears that Mpower has been routinely disputing trip charges billed by SBC, without any apparent effort to demonstrate why it thinks they are inappropriate. Moreover, Mpower fails to escrow any money for the charges it contests.⁴

SBC continues to exercise its best efforts to attempt to resolve this dispute on a business-to-business basis in an amicable manner. During the week of September 15, SBC once again offered to work with Mpower to select a sample more representative of the timeframe encompassing this dispute. To date, Mpower has not agreed to the selection of an appropriate sample that does not include trouble tickets from a time period that already was the subject of a prior settlement.

As the Commission has repeatedly held in prior 271 applications, this is simply not the place to resolve such disputes.

⁴ Mpower has recently represented that it will start investigating the appropriateness of trouble tickets before disputing the billing for them.

SECRET

From: Webber, Rebecca L, NKLAM [mailto:vanderpol@att.com]
Sent: Wednesday, October 01, 2003 9:49 AM
To: BRYAN, JANICE J (SWBT)
Cc: KROST, BECKY (SWBT); TEMPLE, MELONIE (SWBT); Willard, Walter W (Walt), NKLAM
Subject: RE: DISASTER RECOVERY

Janice,

Following up on our conference call today, AT&T is interested in moving ahead SBC's proposal to add an additional TPID and associated IP. We will also continue to evaluate the possibility of using a NATing solution for Disaster Recovery in the future.

Thanks,
Becky

-----Original Message-----

From: BRYAN, JANICE J (SWBT) [mailto:jb7983@sbccom.com]
Sent: Monday, September 29, 2003 10:03 AM
To: Webber, Rebecca L, NKLAM
Cc: KROST, BECKY (SWBT); TEMPLE, MELONIE (SWBT)
Subject: DISASTER RECOVERY

Becky

Per your request, here is a quick overview of items discussed on Friday.

To assist AT&T with its efforts to establish a disaster recovery plan, SBC has suggested expanding the definition of TPID/IP address combinations as currently reflected in the existing Interconnection Procedures document.

Specifically, under the current definition, a TPID associated with different inbound and outbound IP addresses is counted as two separate TPID/IP address combinations. Under the expanded definition discussed on Friday morning, such an arrangement would count as a single TPID/IP combination. In other words, with this proposal, AT&T would have the option of associating each of its three LOA TPIDs with separate inbound and outbound IP addresses. For example, this arrangement would enable AT&T to associate one LOA TPID with one IP address for inbound Consumer transactions, and another IP address for outbound Consumer transactions. Similarly, a second LOA TPID could be associated with separate inbound and outbound IP addresses for ADL transactions, leaving a third LOA TPID available for whatever additional inbound/outbound transactional needs AT&T may have, including a disaster recovery plan. As always, AT&T would be responsible for establishing these arrangements, and managing the transaction flow for each TPID/IP address combination.

In addition to this proposal, SBC also recommended that AT&T work with its network team to reevaluate the possibility of using NAT to make sure there is a continuous connection. NATing would give AT&T control over how quickly it would be able to bring its network back up without relying on a third party to assist in a disaster situation. SBC will seek to expedite the IP change for return traffic that is "in flight" in the event of a true disaster. However, keeping in mind the established procedure is currently ten business days, an expedite could still take up to 5 business days. SBC believes this proposal presents an alternative solution to AT&T's CMP request to expand the current TPID/IP address combinations from 3 to 5. Accordingly, if this proposal is implemented, SBC would expect AT&T to withdraw that request. Also, if agreement is reached, SBC will include the expanded definition of TPID/IP address combinations discussed above in the next Interconnection Procedures document update.

We look forward to receiving AT&T's response to this proposal. In the meantime, if you have any additional questions, please don't hesitate to contact me.

Janice J. Bryan
Account Manager - Industry Markets
SBC Communications, Inc.
214.464.1053 (Office)

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I hereby declare, under penalty of perjury, that the information contained in Part I of the foregoing attachment is true and correct.

Executed on October 2, 2003.

Beth Lawson
Beth Lawson

I hereby declare, under penalty of perjury, that the information contained in Part II of the foregoing attachment is true and correct.

Executed on October 2, 2003.



Paul O'Sullivan

DUPLICATE

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September 24, 2003

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SEP 24 2003

VIA HAND DELIVERY

Marlene Dortch, Secretary,
 Federal Communications Commission
 445 12th Street SW
 Room TWB-204
 Washington, DC 20554

FEDERAL COMMUNICATIONS COMMISSION
 OFFICE OF THE SECRETARY

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Dear Ms. Dortch:

Pursuant to Section 1.1206 of the Commission's Rules, Mpower Communications Corp. ("Mpower") submits this ex parte in the above-captioned proceeding in response to the ex parte filed by SBC Communications on September 22, 2003.¹

The sole issue between SBC and Mpower is whether or not SBC properly billed Mpower for trip charges associated with approximately 14,000 trouble tickets. SBC's response to this inquiry is, in effect: "Yes, but we just can't prove it. The data sample that we agreed to examine to determine whether or not we have properly billed Mpower is not dispositive because it contains 50 tickets for which we improperly billed Mpower." This is typical SBC "reasoning." The bottom line is that the sample data that SBC agreed to examine to resolve this dispute contained bills improperly rendered by SBC and that demonstrate a 93% error rate. SBC contends now, though, that the sample it agreed to examine was "improper" and that a "majority of the charges disputed by Mpower should be sustained."² Not only is this statement an outright misrepresentation, but it also effectively demonstrates just how flawed SBC's billing system is.

¹ See Ex Parte Letter from Geoffrey Klineberg, Kellogg, Huber, Hansen et al. to Marlene H. Dortch, FCC at Appendix A (Sept. 22, 2003) (hereinafter "September 22 Ex Parte Response").

² See September 22 Ex Parte Response, Attachment A at 2

Marlene Dortch
 September 24, 2003
 Page Two

In its September 22 Ex Parte Response SBC defends its flawed billing system by arguing that the data sample that it had previously agreed would be most representative of the entire dispute with Mpower—the 75 randomly picked tickets from the 684 tickets opened in June and July 2002—is now “flawed” and not a “proper, representative sample of SBC’s performance” because the sample set of tickets for June and July 2002 erroneously contained bills that predated the April 7, 2002 settlement of between SBC and Mpower, despite the fact that SBC had spent weeks examining the tickets issued in June and July 2002.³ The Commission should see through the smoke that SBC is creating in an attempt to obfuscate this very simple issue.

As an initial matter, SBC complains that issues related to SBC’s improper billing of Mpower for trip charges, as discussed in detail by Mpower in its September 16, 2003 ex parte, are “not appropriate for resolution in a 271 proceeding and should be handled on a business-to-business basis.” Although it is understandable that SBC would prefer not to have information regarding its poor performance put on the public record, SBC’s assertion that this forum is not the appropriate forum for the Commission to consider wholesale billing issues experienced by Mpower in the state of Illinois is clearly mistaken. The discussion of wholesale billing accuracy, which comprises the entire sum and substance of Mpower’s September 16 ex parte filing, is clearly a proper matter for consideration by the Commission in the context of the instant application. As Mpower noted in its Sept. 16 filing, in the *Verizon Pennsylvania Order* the Commission concluded that nondiscriminatory access to network elements under checklist item 2 includes the requirement that a BOC demonstrate that it can produce readable, auditable and accurate wholesale bills.⁴ SBC has not made the requisite showing. While certainly it is true that the myriad problems created by SBC’s deficient wholesale systems require resolution pursuant to business-to-business negotiations, the occurrence of such negotiations certainly do not preclude Mpower from raising here the fundamental and endemic billing problems necessitating those negotiations in the first place.

In fact, Mpower has been attempting to resolve this dispute with SBC since April 2002, for over 14 months, before SBC saw fit to engage in any good-faith carrier-to-carrier negotiations with Mpower. SBC’s stock response to disputes filed by Mpower relating to the disputed trip charges was to “sustain” the charges. SBC sustained the charges even though, as would later be revealed, SBC could not even find the associated circuit IDs or any other information that would indicate that the disputed ticket either belonged to Mpower or that the trouble was on Mpower’s network. SBC as much as admitted this in its September 22 Ex Parte Response. Nonetheless, SBC routinely attempted to sustain the charges disputed by Mpower. Only on the eve of the filing of this application did Mpower’s trip charge dispute with SBC take

³ See Exhibit 1, July 8, 2003 email from Larry Cooper to Scott Sarem, wherein Mr. Cooper states that “Our folk continue to analyze the data provided by Mpower to understand what gaps may still exist.”

⁴ See *Verizon Pennsylvania Order*, Memorandum Opinion and Order, 16 FCC Rcd 17419, ¶22-23 (2001). (“*Verizon Pennsylvania Order*”).

Marlene Dortch
September 24, 2003
Page Three

on any degree of urgency for SBC. Nonetheless, while the parties have been working together to resolve this dispute since June 2003, SBC's September 22 Ex Parte Response appears to fundamentally misrepresent the facts surrounding this dispute in a manner that is disingenuous, and which belies the evidence that Mpower provides herein.

SBC states that in June 2003 Mpower and SBC agreed to sample approximately 30 to 40 tickets using a previously agreed upon format, but that Mpower, rather than reviewing those tickets, "provided a second (different) sample to SBC consisting of approximately 20 circuits that did not match the sample of 32 that SBC had submitted."⁵ However, SBC omits a crucial piece of the story. Mpower attempted to investigate the sample provided by SBC, but found that of the 30 tickets provided by SBC, 5 them were duplicates and several more of the samples did not contain enough identifying information to allow Mpower to investigate them. Nonetheless, Mpower assessed the tickets provided by SBC and found that SBC had inappropriately assessed trip charges 69% of the time. In fact, Scott Sarem, Vice President, Mpower provided this information to SBC Vice President Larry Cooper in a June 16, 2003 email to Mr. Cooper which is attached hereto as Exhibit 1.⁶ SBC responded to Mpower's investigation by arguing that Mpower had not provided SBC with adequate information to investigate the disputes.⁷ Nonetheless, pending the investigation of the disputes, SBC insisted that Mpower pay for trip charges that SBC could not even find in its billing system, much less, substantiate the propriety thereof.

To counter the initial sample Mpower provided, SBC conducted its own "random sample" of tickets. This sample apparently was not randomly generated, and appeared to be intended to substantiate SBC's characterization of the trip charge dispute with Mpower. However, Mpower conducted its own audit of the SBC-chosen tickets, and still found that SBC had incorrectly billed Mpower on 60% of the tickets. Even when SBC filtered the sample in an apparent effort to pre-determine a positive outcome, Mpower substantiated that SBC was wrong 60% of the time.⁸ SBC and Mpower didn't accept the results of the other's analyses.

Given that SBC and Mpower could not agree on the results of two prior investigations, SBC and Mpower agreed to a third investigation that would examine a statistically significant number of randomly picked tickets that were issued during a relevant time period. Further, the parties agreed to "ground rules" that would govern the results.⁹ SBC and Mpower further agreed that to the extent that they could not agree upon the results of the

⁵ September 22 Ex Parte Response, Attachment A at 1.

⁶ See Exhibit 2, July 16, 2003 email from Scott Sarem, Mpower to Larry Cooper, VP SBC.

⁷ Ironically, Mpower provided SBC the requested information using the same invoice that Mpower had received from SBC. That SBC could not find the information on its own invoice clearly demonstrates that SBC's bills are not "auditable" as required by Section 271.

⁸ See Exhibit 3, July 15, 2003 email from Scott Sarem, SBC to Jennifer Jones, SBC.

⁹ See Exhibit 4, "Ground Rules" email; see also Mpower Sept. 16 ex parte.

Marlene Dortch
 September 24, 2003
 Page Four

investigation, the amounts associated with the disputed tickets would be resolved through the dispute resolution portion of the interconnection contract.¹⁰ Accordingly, Scott Sarem of Mpower and Larry Cooper of SBC met on and off for over a week in a effort to identify the total number of trouble tickets in dispute and the proper months to review to gain a statistically significant and accurate characterization of the issue at hand.¹¹ At Larry Cooper's suggestion, Mpower agreed to utilize the results of a random sample from a pool of 684 trouble tickets from the months of June and July of 2002. Both Mr. Cooper and Mr. Sarem agreed that these two months would accurately reflect the trip charge billing from April 2002 through August of 2003, and the results of this audit would be applied to the rest of the disputes. This was a material term of the "ground rules," and was suggested by SBC. Mpower subsequently agreed to the months in question and agreed to provide 75 randomly selected numbers to be applied to the list of 684 tickets compiled by SBC.¹² The results of this audit demonstrated a 94% SBC error rate.

In its September 22 Ex Parte Response, SBC contends, with no further explanation, that it should not be held responsible for the results of the random sample because among the 75 tickets that SBC agreed to include in the audit, 50 of them "were related to trip charges with work dates that predated terms of the parties' confidential settlement agreement (i.e. they occurred prior to April 7, 2002)."¹³ But as evidenced by Mr. Cooper's July 8, 2003 email to Scott Sarem, (attached hereto as Exhibit 1) SBC personnel had, prior to the beginning of the investigation and of the 75 sample tickets, conducted a thorough review of the underlying data. SBC's admission that it agreed to include the June and July 2002 data, which included back billed charges going back almost *two years* highlights precisely what is wrong with SBC's billing system. That is, SBC's billing system is so messed up that it precludes SBC, even in the context of the audit of a limited data sample, from ensuring that it is providing accurate data, and allows SBC to back bill Mpower for ancient charges. At bottom, SBC's inability to render

¹⁰ *Id.*

¹¹ The reason that Larry Copper and Scott Sarem agreed to the ground rules was to clear up any confusion surrounding the results from the two earlier samples. In the earlier samples, there was no independent manner to verify whether the tickets were selected randomly and there was no time requirement to limit the number of tickets to a statistically significant time period. In other words, the results of approximately 30 to 50 tickets could not be applied to 14,000 tickets in any accurate manner. Additionally, both companies continued to disagree with the results of the samples. Both parties agreed that rather than going back and forth on a flawed sample, it would be more productive to agree in advance upon a methodology, sample size, and sample period.

¹² See Exhibit 4.


¹³ SBC Ex Parte Response, 2. SBC agreed to not bill Mpower for anything prior to April 7, 2002. SBC created new Billing Account Numbers for Mpower to ensure that it would not misbill Mpower for anything prior to April 7, 2002. However, in the time period in question, SBC billed Mpower for invalid trip charges from as far back as November 2000. In other words, SBC misbilled Mpower in violation of prior agreements over 18 months after the billable event occurred. The random sample showed that SBC attempted to back-bill Mpower for a significant amount of invalid trouble tickets that occurred prior to April 7, 2003. It was not that SBC made an innocent mistake of mis-billing events from March 2002 after April 2002. Rather, SBC intentionally billed Mpower for events that happened in many cases one year prior to the agreement.

Marlene Dortch
September 24, 2003
Page Five

accurate bills, highlighted by this incident, is the reason SBC and Mpower have a \$1.2 million dispute outstanding pertaining to incorrectly billed trip charges.

SBC has incorrectly billed Mpower for trip charges on numerous occasions as a result of a billing system that prevents SBC from rendering accurate wholesale bills. SBC's only defense, even in the face of uncontroverted evidence of its inaccurate billing, is to argue that it should not be held responsible for the agreement it struck with Mpower because it did not know the extent of the problems with its billing system and practices. At bottom, SBC's September 22 Ex Parte Response is nothing more than an attempt to lead the Commission to believe that the billing issues it has with Mpower arose from nothing more than a one-time confluence of honest mistakes and bad timing. Mpower submits that the issue is much more serious and remains unresolved. SBC now claims that it has "procedures in place...to ensure proper trouble-ticket coding" to allow CLECs to challenge the disposition of trouble tickets before they are billed. This system was made available to Mpower only in June of 2003, and accordingly, Mpower does not yet have enough experience with it to determine if it is effective.

Respectfully submitted,

A handwritten signature in black ink that reads "Ross A. Buntrock" followed by a stylized flourish.

Ross A. Buntrock

cc:

Pamela Arluk
Douglas Galbi
Deena Shetler
Jennifer McKee
Irshad Abdal-Haqq
Layla Seirafi-Najar (DOJ)

EXHIBIT 1

Buntrock, Ross A.

From: Sarem, Scott [ssarem@mpowercom.com]
Sent: Tuesday, September 23, 2003 1:36 PM
To: Buntrock, Ross A.
Subject: Sarem, Scott
FW: Billing Disputes

-----Original Message-----

From: COOPER, LARRY B (SBC-MSI) [mailto:lc7178@sbc.com]
Sent: Tuesday, July 08, 2003 9:17 AM
To: 'ssarem@mpowercom.com'
Subject: Billing Disputes

Scott-

Our folk continue to analyze the data provided by Mpower to understand what gaps may still exist. I was informed yesterday that it might be the end of the week before we finalize our analysis. Given the time frame to wrap this up coupled with my pending vacation which will start tomorrow, I suggest we wait until my return from vacation before we get back together and see what it will take to close these disputes. I return to the office on July 17th and given I will be unable to do e-mail while out, I would like to shoot for July 21st to reconvene. If this presents a problem with Mpower, please let me know and I will delegate Paul to work with you in my absence.

C

EXHIBIT 2

Buntrock, Ross A.

From: Sarem, Scott [ssarem@mpowercom.com]
Sent: Tuesday, September 23, 2003 1:41 PM
To: Buntrock, Ross A.
Cc: Sarem, Scott; Wilson, Pat; Heatter, Rick
Subject: FW: TT Disputes

-----Original Message-----

From: COOPER, LARRY B (SBC-MSI) [mailto:lc7178@sbc.com]
Sent: Tuesday, June 17, 2003 6:48 AM
To: 'Sarem, Scott'
Subject: RE: TT Disputes

Scott-

Routinely, the Account Manager and Director work customer issues and most cases are able to get resolutions without further escalation. I don't know if Mpower's issues of late are so far out of the routine and more complex; or meeting of the minds is not as quick to happen because of the issues we ultimately ended up filing formal complaints and thus aside from that process. What ever the case, I want us to get back to the level we had before. I will personally get involved to find out what's the problem and see if we can get a fix. Was out of the office yesterday, so I will touch bases with my team, find out where we are and give you a follow-up by COB today.

LBC

-----Original Message-----

From: Sarem, Scott [mailto:ssarem@mpowercom.com]
Sent: Monday, June 16, 2003 4:14 PM
To: COOPER, LARRY B (SBC-MSI); O'SULLIVAN, PAUL A (PTSS)
Cc: KERR, DAVID D (SBC-MSI); Wilson, Pat; Heatter, Rick
Subject: FW: TT Disputes
Importance: High

Larry:

Attached is the most recent random look at the trouble ticket information SBC claims is correct that Mpower researched and then contends that SBC is incorrect.

I wanted to provide you this for review. At the rate we are going, the trip charges dispute in all three SBC regions will never be resolved absent legal action. I have been trying to get some resolution with Paul but it seems that his hands are tied.

Please let me know how you would like to proceed on the trip charge issue. Mpower continues to find serious flaws in the tickets we are billed for. We are comfortable with defending ourselves in a collection arbitration. We would rather not go this route, but it seems like it is the route SBC has chosen.

We are now disputing tickets when they are closing in EBTA and this should hopefully help on a prospective basis.

I am concerned that it takes months and sometimes over a year to resolve issues. What is missing is the same level of attention Mpower used to receive from SBC. I would like to see that come back. What do we need to do to get back to the good old days?

Regards,

Scott

> -----Original Message-----

> From: Mittwede, Carol

> Sent: Wednesday, June 11, 2003 5:05 PM

> To: Sarem, Scott; Wilson, Pat

> Cc: Reimer, Steve; Scott, Glen; Wetzel, Joe

> Subject: FW: TT Disputes

>

> as requested

>

> -----Original Message-----

> From: Scott, Glen

> Sent: Wednesday, June 11, 2003 4:53 PM

> To: Mittwede, Carol

> Subject: TT Disputes

>

> I left Herman's comments on the PAC Bell accounts but both PAC Bell and

> Ameritech data is attached.

>

-----Original Message-----

From: Pegues, Herman

> Sent: Wednesday, June 11, 2003 4:46 PM

> To: McGraw, Mike

> Subject: PacBell Disputes.xls

>

>

> They provided us with 30 but some were duplicates..Out of the actual

> 25, 3 of them could not be found at all, so we left them blank. We

> need more proof of why ILEC even rolled on those 3. Out of the 22 left, 12 could be

> disputed which is 54%. <<PacbellDisputes.xls>> <<Ameritech

> Disputes1.xls>>

EXHIBIT 3

Buntrock, Ross A.

From: Sarem, Scott [ssarem@mpowercom.com]
Sent: Tuesday, September 23, 2003 10:43 PM
To: Buntrock, Ross A.
Cc: Sarem, Scott
Subject: FW: TT Disputes

-----Original Message-----

From: Sarem, Scott
Sent: Tuesday, July 15, 2003 4:59 PM
To: 'JONES, JENNIFER (PB)'
Subject: RE: TT Disputes

do you or do you not have everything you need?

-----Original Message-----

From: JONES, JENNIFER (PB) [mailto:jd2725@sbc.com]
Sent: Tuesday, July 15, 2003 4:39 PM
To: 'Sarem, Scott'
Subject: RE: TT Disputes

Great! I will confirm that with our billing organization.

Jennifer Jones
Account Manager
Industry Markets
SBC/Pacific Bell
415-542-1997 Voice
415-541-0448 Fax
jd2725@sbc.com

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-----Original Message-----

From: Sarem, Scott [mailto:ssarem@mpowercom.com]
Sent: Tuesday, July 15, 2003 4:28 PM
To: JONES, JENNIFER (PB); Sarem, Scott; O'SULLIVAN, PAUL A (PTSS)
Cc: Wilson, Pat; Eichler, Todd
Subject: RE: TT Disputes

or now you have everything you need?

Original Message-----

From: JONES, JENNIFER (PB) [mailto:jd2725@sbc.com]

Sent: Tuesday, July 15, 2003 4:26 PM

To: Sarem, Scott; O'SULLIVAN, PAUL A (PTSS)

Vilson, Pat; Eichler, Todd

Subject: RE: TT Disputes

In response to your message, it appeared your initial response did not include all the circuits that was associated with our filing. The LSC will be reviewing your response tomorrow. Upon completion of their review I will let you know if we need additional information.

Thanks,
Jennifer Jones
Unit Manager
Strategy Markets
Pacific Bell
542-1997 Voice
541-0448 Fax
jd2725@sbc.com

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Original Message-----

From: Sarem, Scott [mailto:ssarem@mpowercom.com]

Sent: Tuesday, July 15, 2003 12:22 AM

To: JONES, JENNIFER (PB); Sarem, Scott; O'SULLIVAN, PAUL A (PTSS)

Vilson, Pat; Eichler, Todd

Subject: RE: TT Disputes

I am not sure what you are looking for?

Original Message-----

From: JONES, JENNIFER (PB) [mailto:jd2725@sbc.com]

Sent: Wednesday, July 02, 2003 12:00 PM

To: Sarem, Scott; O'SULLIVAN, PAUL A (PTSS)

Vilson, Pat; Eichler, Todd

Subject: RE: TT Disputes

Thank you for your response. However we are looking for approximately 13 more responses for the Ameritech region. Could you advise as to when SBC will receive the remaining tickets?

Thanks,

Jennifer Jones
Account Manager
Industry Markets
BC/Pacific Bell
1-542-1997 Voice
1-541-0448 Fax
j2725@sbc.com

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-----Original Message-----

From: Sarem, Scott [mailto:ssarem@mpowercom.com]
Sent: Wednesday, July 02, 2003 12:05 AM
To: O'SULLIVAN, PAUL A (PTSS); JONES, JENNIFER (PB)
Cc: Wilson, Pat; Eichler, Todd
Subject: FW: TT Disputes

Paul:

Attached is Mpower's analysis of the AIT and PB trouble tickets initially researched by SBC.

Let me know if you have any questions.

Scott

<<PacbellDisputes.xls>> <<Ameritech Disputes1.xls>>

EXHIBIT 4

Buntrock, Ross A.

From: Sarem, Scott [ssarem@mpowercom.com]
Sent: Monday, September 15, 2003 10:53 AM
To: Buntrock, Ross A.
Subject: FW: Ground Rules

Importance: High

-----Original Message-----

From: Sarem, Scott
Sent: Thursday, September 04, 2003 1:54 PM
To: Heatter, Rick; Wilson, Pat; Sarem, Scott
Subject: FW: Ground Rules
Importance: High

Please save this as evidence of the trip charge dispute agreement.

Scott

-----Original Message-----

From: O'SULLIVAN, PAUL A (PTSS) [mailto:po2652@sbc.com]
Sent: Thursday, August 21, 2003 2:36 PM
To: 'Sarem, Scott'
Cc: JONES, JENNIFER (PB); COOPER, LARRY B (SBC-MSI)
Subject: RE: Ground Rules

Scott,

I concur with your upgrades.

Paul O'Sullivan
Director - CLEC Account Management
Industry Markets
415-545-0967 office
877-318-9592 pager
415-541-0665 fax

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-----Original Message-----

From: Sarem, Scott [mailto:ssarem@mpowercom.com]
Sent: Thursday, August 21, 2003 2:21 PM
To: O'SULLIVAN, PAUL A (PTSS); Sarem, Scott
Cc: JONES, JENNIFER (PB); COOPER, LARRY B (SBC-MSI)

Subject: RE: Ground Rules

I propose the following for the bullet point regarding Mpower not being able to find the ticket.

If Mpower cannot find a circuit id associated with the trouble ticket, then SBC must provide information that demonstrates that the circuit id belongs to Mpower. Once SBC can demonstrate the circuit id belongs to MPower it must provide evidence that the trouble was on Mpower's side of the network. If SBC provides conclusive evidence that the circuit belongs to Mpower and that the trouble is on Mpower's side, the ticket will go in SBC's favor.

If trouble is shown to be conclusively on the Mpower side of the network, the ticket will go in SBC's favor.

If trouble is conclusively shown to be on AIT's network, the ticket will go in Mpower's favor.

If you agree to this change we have consensus.

Scott

-----Original Message-----

From: O'SULLIVAN, PAUL A (PTSS) [mailto:po2652@sbccom.com]
Sent: Thursday, August 21, 2003 2:12 PM
To: 'Sarem, Scott'
Cc: JONES, JENNIFER (PB); COOPER, LARRY B (SBC-MSI)
Subject: FW: Ground Rules

Scott,

I've made the upgrades that we just discussed to bullet 5 and 7. Let me know if you agree.

Paul O'Sullivan
Director - CLEC Account Management
Industry Markets
415-545-0967 office
877-318-9592 pager
415-541-0665 fax

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> -----Original Message-----

> From: O'SULLIVAN, PAUL A (PTSS)
> Sent: Wednesday, August 20, 2003 3:14 PM
> To: 'Sarem, Scott'
> Cc: JONES, JENNIFER (PB); COOPER, LARRY B (SBC-MSI)
> Subject: Ground Rules

>

> Scott,

>

> Please let me know your thoughts on these ground rules for conducting

> the review of the Mid-west Trip Charges.
>
> * Sample size is 75 tickets
> * MPower will provide SBC with 75 numbers, ranging between 2 - 684.
> Those numbers will correlate to the line item (Trip Ticket dispute) on
> the master dispute spreadsheet that SBC has compiled. Those 75 line
> items represent the sample that both companies will review.
> * The results from the 75 tickets will be applied across the entire
> based to resolve the Mid-West Trip Charge dispute.
> * If SBC can not find the information on a ticket that supports their
> position, the ticket will go in MPower's favor.
> * If MPower can not find the information on a ticket that supports
> their position, SBC will valid that the circuit belongs to MPower. If
> MPower still can not find any information the ticket will go in SBC's
> favor. IF SBC finds that the circiut does not belong to MPower that
> ticket will go in MPower's favor.
> * If both parties disagree on the findings, then those tickets in
> question would go through the ADR process for resolution.
> * Both parties agree to have their research complete within 5
> business days of receiving the data.
>
> Paul O'Sullivan
> Director - CLEC Account Management
> Industry Markets
> 415-545-0967 office
> 877-318-9592 pager
> 415-541-0665 fax
>
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>



Federal Communications Commission

The FCC Acknowledges Receipt of Comments From ... **Mpower Communications** ...and Thank You for Your Comments

Your Confirmation Number is: '2003922282575 '

Date Received: Sep 22 2003

Docket: 03-167

Number of Files Transmitted: 1

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EMAIL: rbuntrock@kelleydrye.com

September 22, 2003

VIA ELECTRONIC FILING

Marlene Dortch, Secretary,
Federal Communications Commission
445 12th Street SW
Room TWB-204
Washington, DC 20554

Re: Ex Parte Notification: WC Docket 03-167, Application By SBC
Communications Inc. For Authorization Under Section 271 of The
Communications Act to Provide In-Region, Inter LATA Service in the
States of Illinois, Ohio, Indiana and Wisconsin

Dear Ms. Dortch:

Pursuant to Section 1.1206 of the Commission's Rules, Mpower Communications Corp. ("Mpower") submits this notice, in the above-captioned proceeding, of a telephonic *ex parte* meeting attended by Scott Sarem, Vice President, Strategic Relations, Mpower; Pat Wilson, Director, LEC Relations, Mpower; Ross Buntrock, Kelley Drye & Warren, LLP, counsel to Mpower and Pamela Arluck, Jeremy Miller, Jeffrey Tignor, and Rodney McDonald of the Federal Communications Commission, Wireline Competition Bureau. The purpose of the meeting was to follow up on the written *ex parte* presentation submitted in this docket by Mpower on September 16, 2002.

Specifically, Mpower explained that from April 2002 through August 2003, which includes the March through July 2003 period under consideration in the instant application, SBC has improperly billed Mpower for trip charges on approximately 14,000 trouble tickets in the state of Illinois. SBC has levied these improper trip charges upon Mpower despite the fact that SBC, to date, has failed to demonstrate that Mpower was the party that opened the tickets, that the troubles were on Mpower's side of the network, or that the circuits associated with the trouble tickets were associated with loops leased from SBC by Mpower. As of today, approximately \$1.2 million associated with SBC's improper billing of trip charges to Mpower in the state of Illinois remains in dispute.

Marlene Dortch
September 22, 2003
Page Two

Mpower explained to the Commission attendees that until September 12, Mpower and SBC were on the cusp of settling the dispute pursuant to a methodology proposed and agreed upon by SBC executives.¹ Specifically, SBC Vice President Larry Cooper, in a tacit acknowledgment of the serious issues associated with SBC's wholesale billing system in Illinois, proposed that the parties resolve the issues associated with the improper trip charges by examining data for 2 months of the 17 months at issue (June and July 2002) and applying the results of the investigation to the entire 17 month period.² As Mpower explained in its September 16 *ex parte*, SBC executives agreed that the June and July 2002 data would best represent the nature of the disputes for the entire 17 month period and should be applied to the entire disputed amount. However, once the results of the investigation (conducted pursuant to the ground rules agreed upon by SBC) demonstrated that 93% of the trip charges billed to Mpower by SBC were incorrect, SBC asked to change the rules of audit. Specifically, SBC asked Mpower to agree to "re-do" the audit based on a different sample, presumably one that might be more favorable to SBC.

Through its actions here, Mpower argued that SBC has effectively demonstrated that it is incapable of rendering accurate wholesale bills to Mpower. Mpower urged the Commission to deny the Application for the state of Illinois. In accordance with Rule 1.1206 of the Commission's rules, one electronic copy of this notice and the attached materials are being provided for inclusion in the above referenced docket.

Respectfully submitted,



Ross A. Buntrock

cc: Chairman Powell
Commissioner Abernathy
Commissioner Adelstein
Commissioner Copps
Commissioner Martin
Christopher Libertelli

¹ Pursuant to the ground rules, the parties agreed to parse data for 75 of the 684 trouble tickets opened for June and July 2002. Mpower agreed to provide SBC with 75 numbers ranging from 2 to 684 to correlate to the "line item (Trip Ticket dispute) on the master dispute spreadsheet" compiled by SBC. The carriers further agreed that "the results from the 75 tickets will be applied across the entire [sic] based to resolve the Mid-West Trip Charge dispute." See Sept. 16 Ex Parte, Attachment 1.

² SBC's Larry Cooper specifically agreed that data for June and July 2002 would be the most useful, representative, pure and readily accessible data to review in connection with these disputes.

Marlene Dortch
September 22, 2003
Page Three

Matthew Brill
Jordan Goldstein
Dan Gonzalez
Lisa Zaina
William Maher
Jeffrey Carlisle
Michelle Carey
Thomas Navin
Brent Olson
John Stanley
Jeremy Miller
John Rogovin
Pamela Arluk
Douglas Galbi
Deena Shetler
Jennifer McKee
Irshad Abdal-Haqq
Layla Seirafi-Najar (DOJ)

**Federal Communications Commission**

**The FCC Acknowledges Receipt of Comments From ...
Mpower Communications
...and Thank You for Your Comments**

Your Confirmation Number is: '2003922282575 '

Date Received: Sep 22 2003

Docket: 03-167

Number of Files Transmitted: 1

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September 22, 2003

VIA ELECTRONIC FILING

Marlene Dortch, Secretary,
Federal Communications Commission
445 12th Street SW
Room TWB-204
Washington, DC 20554

Re: Ex Parte Notification: WC Docket 03-167, Application By SBC Communications Inc. For Authorization Under Section 271 of The Communications Act to Provide In-Region, Inter LATA Service in the States of Illinois, Ohio, Indiana and Wisconsin

Dear Ms. Dortch:

Pursuant to Section 1.1206 of the Commission's Rules, Mpower Communications Corp. ("Mpower") submits this notice, in the above-captioned proceeding, of a telephonic *ex parte* meeting attended by Scott Sarem, Vice President, Strategic Relations, Mpower; Pat Wilson, Director, LEC Relations, Mpower; Ross Buntrock, Kelley Drye & Warren, LLP, counsel to Mpower and Pamela Arluck, Jeremy Miller, Jeffrey Tignor, and Rodney McDonald of the Federal Communications Commission, Wireline Competition Bureau. The purpose of the meeting was to follow up on the written *ex parte* presentation submitted in this docket by Mpower on September 16, 2002.

Specifically, Mpower explained that from April 2002 through August 2003, which includes the March through July 2003 period under consideration in the instant application, SBC has improperly billed Mpower for trip charges on approximately 14,000 trouble tickets in the state of Illinois. SBC has levied these improper trip charges upon Mpower despite the fact that SBC, to date, has failed to demonstrate that Mpower was the party that opened the tickets, that the troubles were on Mpower's side of the network, or that the circuits associated with the trouble tickets were associated with loops leased from SBC by Mpower. As of today, approximately \$1.2 million associated with SBC's improper billing of trip charges to Mpower in the state of Illinois remains in dispute.

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Mpower explained to the Commission attendees that until September 12, Mpower and SBC were on the cusp of settling the dispute pursuant to a methodology proposed and agreed upon by SBC executives.¹ Specifically, SBC Vice President Larry Cooper, in a tacit acknowledgment of the serious issues associated with SBC's wholesale billing system in Illinois, proposed that the parties resolve the issues associated with the improper trip charges by examining data for 2 months of the 17 months at issue (June and July 2002) and applying the results of the investigation to the entire 17 month period.² As Mpower explained in its September 16 *ex parte*, SBC executives agreed that the June and July 2002 data would best represent the nature of the disputes for the entire 17 month period and should be applied to the entire disputed amount. However, once the results of the investigation (conducted pursuant to the ground rules agreed upon by SBC) demonstrated that 93% of the trip charges billed to Mpower by SBC were incorrect, SBC asked to change the rules of audit. Specifically, SBC asked Mpower to agree to "re-do" the audit based on a different sample, presumably one that might be more favorable to SBC.

Through its actions here, Mpower argued that SBC has effectively demonstrated that it is incapable of rendering accurate wholesale bills to Mpower. Mpower urged the Commission to deny the Application for the state of Illinois. In accordance with Rule 1.1206 of the Commission's rules, one electronic copy of this notice and the attached materials are being provided for inclusion in the above referenced docket.

Respectfully submitted,



Ross A. Buntrock

cc: Chairman Powell
Commissioner Abernathy
Commissioner Adelstein
Commissioner Copps
Commissioner Martin
Christopher Libertelli

¹ Pursuant to the ground rules, the parties agreed to parse data for 75 of the 684 trouble tickets opened for June and July 2002. Mpower agreed to provide SBC with 75 numbers ranging from 2 to 684 to correlate to the "line item (Trip Ticket dispute) on the master dispute spreadsheet" compiled by SBC. The carriers further agreed that "the results from the 75 tickets will be applied across the entire [sic] based to resolve the Mid-West Trip Charge dispute." See Sept. 16 Ex Parte, Attachment 1.

² SBC's Larry Cooper specifically agreed that data for June and July 2002 would be the most useful, representative, pure and readily accessible data to review in connection with these disputes.

Marlene Dortch
September 22, 2003
Page Three

Matthew Brill
Jordan Goldstein
Dan Gonzalez
Lisa Zaina
William Maher
Jeffrey Carlisle
Michelle Carey
Thomas Navin
Brent Olson
John Stanley
Jeremy Miller
John Rogovin
Pamela Arluk
Douglas Galbi
Deena Shetler
Jennifer McKee
Irshad Abdal-Haqq
Layla Seirafi-Najar (DOJ)

**Federal Communications Commission**

**The FCC Acknowledges Receipt of Comments From ...
Mpower Communications, Inc.
...and Thank You for Your Comments**

Your Confirmation Number is: '2003916922884 '

Date Received: Sep 16 2003

Docket: 03-167

Number of Files Transmitted: 1

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Marlene Dortch, Secretary,
Federal Communications Commission
445 12th Street SW
Room TWB-204
Washington, DC 20554

Re: Ex Parte Notification: WC Docket 03-167, Application By SBC Communications Inc. For Authorization Under Section 271 of The Communications Act to Provide In-Region, Inter LATA Service in the States of Illinois, Ohio, Indiana and Wisconsin

Dear Ms. Dortch:

Pursuant to Section 1.1206(b)(1) of the Commission's Rules, Mpower Communications, Inc. ("Mpower") submits this written *ex parte* presentation in the above-captioned proceeding. The purpose of this filing is to update the record regarding SBC's failure to provide accurate wholesale bills to Mpower in the former Ameritech region, in compliance with checklist item 2 of the Section 271 competitive checklist. As detailed below, it is clear that SBC is either incapable of issuing accurate wholesale bills to Mpower, as required by checklist item 2, or alternatively, that SBC is intentionally misbilling Mpower and other carriers in an effort to dupe unwitting carriers into paying fraudulently issued bills.

Mpower, headquartered in Pittsford, New York, is a facilities-based competitive local exchange carrier ("CLEC") that has provided bundled packages of local, long distance, and enhanced services to small and medium sized business customers in the states comprising the former Ameritech region. Beginning in April 2002, through August 2003, Mpower filed billing disputes, pursuant to the provisions of its interconnection agreement with SBC, in connection with trip charges improperly assessed by SBC on approximately 14,000 trouble tickets. Despite the fact that it has billed Mpower, to date, SBC has not been able to provide any evidence that Mpower was the party that opened the tickets, that the troubles were on Mpower's side of the network, or that the circuits associated with the trouble tickets were even associated with loops

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leased from SBC by Mpower. Moreover, some of the trip charges billed to Mpower by SBC have already been settled between Mpower and SBC pursuant to the terms of a settlement agreement between the parties.¹ Nonetheless, as of August 30, 2003, approximately \$1.2 million associated with SBC's improper billing of trip charges to Mpower in the Ameritech region remains in dispute.

SBC either has a serious issue with the accuracy of its wholesale bills in the Ameritech territory, or alternatively, SBC is engaged in the practice of intentionally incorrectly billing carriers for maintenance and repair work caused by trouble on the SBC side of the network. In any event, SBC knows it has substantially misbilled Mpower for trip charges in the Ameritech territory which are currently at issue. In order to investigate and resolve the issues associated with the improper trip charges, the parties undertook carrier-to-carrier negotiations. In an effort to more manageably investigate the disputes, Mpower and SBC agreed to examine data associated with the incorrect charges for 2 months of the 17 months at issue and apply the results of the investigation to the entire 17 month period.²

In the 2 months examined, June and July 2002, SBC billed Mpower for trip charges in 684 instances. To further narrow the disputes and reduce the amount of data that needed be examined, SBC and Mpower mutually agreed to a set of "ground rules" for investigation of the 684 trip charges for the agreed upon 2 months, which are attached hereto as Attachment 1. Pursuant to the ground rules, the parties agreed to parse data for 75 of the 684 trouble tickets. Further, Mpower agreed to provide SBC with 75 numbers ranging from 2 to 684 to correlate to the "line item (Trip Ticket dispute) on the master dispute spreadsheet" compiled by SBC.³ The carriers further agreed that "the results from the 75 tickets will be applied across the entire [sic] based to resolve the Mid-West Trip Charge dispute."⁴ In other words, the carriers agreed to extrapolate the results of the audit of the 75 tickets to all of the disputed trip charges for the 17 month period.⁵

Initially, upon examining the 75 tickets identified by Mpower, SBC's Local Service Center ("LSC") immediately concluded, with little or no research, that the disputed trip charges were properly assessed by SBC and that Mpower was responsible for payment. Mpower countered the LSC's assertion with evidence refuting the LSC's findings. The evidence presented by Mpower to the LSC and the SBC account team substantiated that 70 out of the 75 trouble tickets examined were, in fact, billed incorrectly and that Mpower deserved a billing

¹ See *In re Mpower Holding Corp. et. al*, Chapter 11 Case No. 02-11046, Order Approving Confidential Stipulation and Order Regarding Debtors' Objection to Claims of SBC Affiliates (Bankr. D. Del. Feb. 10, 2003).

² Mpower and SBC agreed to review data for the months of June and July 2002 because both Mpower and SBC agreed that those months provide an accurate and honest snapshot of SBC's inaccurate billing.

³ See Attachment 1

⁴ *Id.*

⁵ *Id.*

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credit. **SBC concurred with this finding.** In other words, SBC billed Mpower incorrectly 93% of the time for trip charges.

However, once the results of the audit were substantiated, and SBC came to appreciate the gravity of their billing problems as it pertained to these charges, SBC inexplicably sought to change the ground rules to which they had previously agreed in order to deprive Mpower of the full credit it deserves (i.e. 93% of an invoice of \$1.2 million). That is, once SBC discovered that the results of the audit favor Mpower, it now wants to re-write the rules and start game over. One might expect such brazenly childish behavior on an elementary school playground, but not from the executives of a multi-billion dollar company. Accordingly, SBC has effectively demonstrated that not only is it incapable of rendering accurate wholesale bills to Mpower and other CLECs in the SBC Midwest region, but also that SBC's word cannot be relied upon by carriers in dispute resolution negotiations. It appears that SBC is unwilling to negotiate in good faith and adhere to the agreement it made with Mpower in order to amicably resolve the disputes arising from the improperly billed trip charges.

In light of Mpower's experience here, the Commission should not rely upon any promises by SBC to fix the plethora of problems with SBC's wholesale billing systems, at some future point in time. Rather, the Commission should demand that SBC immediately address the issues identified by the Department of Justice, and other carriers in this proceeding, before granting this application for 271 authority.⁶ After all, if SBC fails to live up to its promises to carriers *before* being granted 271 authority, it will certainly have no incentive to do so afterward. The Commission should, in no uncertain terms, insist that SBC resolve the "serious questions remain[ing] concerning the accuracy of SBC's wholesale billing," which precluded the Department of Justice from concluding that SBC has adequately addressed the issues associated with SBC's wholesale billing system.⁷ Clearly, SBC has not complied with checklist item 2.

Checklist item 2 requires that SBC provide non-discriminatory access to network elements in accordance with section 251(c)(3) and 252(d)(1). In the *Verizon Pennsylvania Order* the Commission concluded that nondiscriminatory access to network elements under checklist item 2 includes the requirement that a BOC demonstrate that it can produce readable, auditable and accurate wholesale bills.⁸ The Commission held:

⁶ Evaluation of the U.S. Department of Justice, *In re: Joint Application by SBC Communications Inc., Illinois Bell Telephone Company, Indiana Bell Telephone Company, the Ohio Bell Telephone Company, Wisconsin Bell, Inc. Southwestern Bell Communications Services, Inc. for Provision of In-Region, InterLATA Services in Illinois, Indiana, Ohio and Wisconsin*, WC Docket 03-167 (Aug. 26, 2003) ("DOJ Evaluation").

⁷ DOJ Evaluation, 14.

⁸ See *Verizon Pennsylvania Order*, Memorandum Opinion and Order, 16 FCC Rcd 17419, ¶22-23 (2001). ("Verizon Pennsylvania Order").

Marlene Dortch
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Page Four

Inaccurate or untimely wholesale bills can impede a competitive LEC's ability to compete in many ways. First, a competitive LEC must spend additional monetary and personnel resources reconciling bills and pursuing bill corrections. Second, a competitive LEC must show improper overcharges as current debts on its balance sheet until the charges are resolved, which can jeopardize its ability to attract investment capital. Third, competitive LECs must operate with a diminished capacity to monitor, predict and adjust expenses and prices in response to competition. Fourth, competitive LECs may lose revenue because they generally cannot, as a practical matter, back-bill end users in response to an untimely wholesale bill from an incumbent LEC. Accurate and timely wholesale bills in both retail and BOS BDT format thus represent a crucial component of OSS.⁹

To demonstrate compliance with an item contained in the section 271 competitive checklist, including checklist item 2, SBC must prove that "it currently furnishes, or is ready to furnish, the checklist item on a nondiscriminatory basis."¹⁰ Clearly, that is not the case, as no material change has been made to SBC's billing systems since the DOJ Evaluation was filed on August 26.

To the extent that the erroneous bills Mpower has received from SBC are not the result of error, they are the result of a knowing effort by SBC to misbill CLECs. In fact, the record of this proceeding demonstrates that SBC has consistently misbilled CLECs.¹¹ This knowing and intentional misbilling bogs CLECs down in protracted "negotiations" with SBC in order to obtain the proper credits, costing CLECs hundreds of thousands of dollars per year, as the Commission recognized in the *Verizon Pennsylvania Order*. In Mpower's experience, to the extent that the "negotiations" do not result in a favorable outcome for SBC, they will take their ball and go home. Moreover, SBC generally insists that CLECs escrow the often large amounts of money at issue before SBC will investigate a billing dispute. Therefore, by intentionally misbilling CLECs SBC can tie up vast sums of CLEC operating capital and hobble the CLEC's ability to effectively compete in the marketplace.

⁹ *Verizon Pennsylvania Order*, ¶ 23 (citations omitted).

¹⁰ See *Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State of New York*, Memorandum Opinion and Order, 15 FCC Rcd 3953, 3973-74 at ¶ 52 (1999). ("Bell Atlantic NY Order"), *aff'd*, *AT&T Corp. v. FCC*, 220 F.3d 607 (D.C. Cir. 2000).

¹¹ See Z-Tel comments, 11.

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As demonstrated above, SBC does not comply with the wholesale billing requirements of competitive checklist item 2. Accordingly, the Commission should not approve the Application until such time as SBC has demonstrated affirmatively that it has corrected its systems and abandoned its policy of unlawfully billing CLECs as described herein. In accordance with Rule 1.1206 of the Commission's rules, one electronic copy of this notice and the attached materials are being provided for inclusion in the above referenced docket.

Respectfully submitted,



Ross A. Buntrock

cc: Chairman Powell
Commissioner Abernathy
Commissioner Adelstein
Commissioner Copps
Commissioner Martin
Christopher Libertelli
Matthew Brill
Jordan Goldstein
Dan Gonzalez
Lisa Zaina
William Maher
Jeffrey Carlisle
Michelle Carey
Thomas Navin
Brent Olson
John Stanley
Jeremy Miller
John Rogovin
Pamela Arluk
Douglas Galbi
Deena Shetler
Jennifer McKee
Irshad Abdal-Haqq
Layla Seirafi-Najar (DOJ)

Attachment A

Buntrock, Ross A.

From: Sarem, Scott [ssarem@mpowercom.com]
Sent: Monday, September 15, 2003 10:53 AM
To: Buntrock, Ross A.
Subject: FW: Ground Rules

Importance: High

-----Original Message-----

From: Sarem, Scott
Sent: Thursday, September 04, 2003 1:54 PM
To: Heatter, Rick; Wilson, Pat; Sarem, Scott
Subject: FW: Ground Rules
Importance: High

Please save this as evidence of the trip charge dispute agreement.

Scott

-----Original Message-----

From: O'SULLIVAN, PAUL A (PTSS) [mailto:po2652@sbc.com]
Sent: Thursday, August 21, 2003 2:36 PM
To: 'Sarem, Scott'
Cc: JONES, JENNIFER (PB); COOPER, LARRY B (SBC-MSI)
Subject: RE: Ground Rules

Scott,

I concur with your upgrades.

Paul O'Sullivan
Director - CLEC Account Management
Industry Markets
415-545-0967 office
877-318-9592 pager
415-541-0665 fax

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-----Original Message-----

From: Sarem, Scott [mailto:ssarem@mpowercom.com]
Sent: Thursday, August 21, 2003 2:21 PM
To: O'SULLIVAN, PAUL A (PTSS); Sarem, Scott
Cc: JONES, JENNIFER (PB); COOPER, LARRY B (SBC-MSI)

Subject: RE: Ground Rules

I propose the following for the bullet point regarding Mpower not being able to find the ticket.

If Mpower cannot find a circuit id associated with the trouble ticket, then SBC must provide information that demonstrates that the circuit id belongs to Mpower. Once SBC can demonstrate the circuit id belongs to MPower it must provide evidence that the trouble was on Mpower's side of the network. If SBC provides conclusive evidence that the circuit belongs to Mpower and that the trouble is on Mpower's side, the ticket will go in SBC's favor.

If trouble is shown to be conclusively on the Mpower side of the network, the ticket will go in SBC's favor.

If trouble is conclusively shown to be on AIT's network, the ticket will go in Mpower's favor.

If you agree to this change we have consensus.

Scott

-----Original Message-----

From: O'SULLIVAN, PAUL A (PTSS) [mailto:po2652@sbc.com]
Sent: Thursday, August 21, 2003 2:12 PM
To: 'Sarem, Scott'
Cc: JONES, JENNIFER (PB); COOPER, LARRY B (SBC-MSI)
Subject: FW: Ground Rules

Scott,

I've made the upgrades that we just discussed to bullet 5 and 7. Let me know if you agree.

Paul O'Sullivan
Director - CLEC Account Management
Industry Markets
415-545-0967 office
877-318-9592 pager
415-541-0665 fax

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> -----Original Message-----

> From: O'SULLIVAN, PAUL A (PTSS)
> Sent: Wednesday, August 20, 2003 3:14 PM
> To: 'Sarem, Scott'
> Cc: JONES, JENNIFER (PB); COOPER, LARRY B (SBC-MSI)
> Subject: Ground Rules

>

> Scott,

>

> Please let me know your thoughts on these ground rules for conducting

- > the review of the Mid-west Trip Charges.
- >
- > * Sample size is 75 tickets
- > * MPower will provide SBC with 75 numbers, ranging between 2 - 684.
- > Those numbers will correlate to the line item (Trip Ticket dispute) on
- > the master dispute spreadsheet that SBC has compiled. Those 75 line
- > items represent the sample that both companies will review.
- > * The results from the 75 tickets will be applied across the entire
- > based to resolve the Mid-West Trip Charge dispute.
- > * If SBC can not find the information on a ticket that supports their
- > position, the ticket will go in MPower's favor.
- > * If MPower can not find the information on a ticket that supports
- > their position, SBC will valid that the circuit belongs to MPower. If
- > MPower still can not find any information the ticket will go in SBC's
- > favor. IF SBC finds that the circiut does not belong to MPower that
- > ticket will go in MPower's favor.
- > * If both parties disagree on the findings, then those tickets in
- > question would go through the ADR process for resolution.
- > * Both parties agree to have their research complete within 5
- > business days of receiving the data.
- >
- > Paul O'Sullivan
- > Director - CLEC Account Management
- > Industry Markets
- > 415-545-0967 office
- > 877-318-9592 pager
- > 415-541-0665 fax
- >
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